IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Writ Petition No.3728 of 2007

M/s.Premier Ltd. Petitioner
Vs.
Chandrakant Vishnu Sutar Respondent

With

Writ Petition No.3807 of 2007

M/s.Premier Ltd. Petitioner
Vs.
Vasant Sadashiv Takale Respondent

Mr.K.S.Bapat with Mr.Jayesh Desai i/b. Desai & Desai Associates for petitioner.

CORAM: B.H.MARLAPALLE, J.

November 22, 2007.

P.C.

1. Heard Mr.Bapat, the learned counsel for the petitioner - company which is aggrieved by the orders passed by the Labour Court at Pune and confirmed by the Industrial Court at Pune and both these orders are common in nature and, therefore, these two petitions are heard together and are being disposed off by this order.

2. The respondent nos.2 and 3 in both the petitions stand deleted forthwith as they are not necessary parties being the Judicial Officers.

3. The respondents - employees in both the petitions had put in more than 20 years of service with the petitioner - company and it appears that during the period from 14/9/1999 to 20/9/1999 they were on sanctioned leave. The company had received a report dated 18/10/1999 by one of its officers - Shri A. Sathya Narayanan stating that on 18/9/1999 he had visited at M/s.Rane Madras Ltd. and noticed that MTDC personnel were attending on the machine (HC 500) sold by the petitioner - company to M/s. Rane Madras Ltd. Based on this report the respondents were charge-sheeted alleging that while they were on sanctioned leave, they were attending to the maintenance work of HC 500 machine in the premises of M/s. Rane Madras Ltd. at Chennai as the representatives of the company supplier by name M/s. M.K. Enterprises and this act on their part amounted to dishonesty in connection with the company's business which is a misconduct under Clause 24(d) of the Model Standing Orders applicable to the workmen doing manual or technical work. A Departmental Enquiry was instituted against both the respondents and the enquiry was held jointly. The Enquiry Officer found them guilty and, therefore, they were

awarded the punishment of dismissal from service as per the order dated 1/4/2000. These orders came to be challenged separately in Complaint (ULP) Nos.100 and 117 of 2000 by both the respondents and the complaints were opposed by the petitioner. On the preliminary point of the legality of the enquiry the Labour Court had held against the petitioner - company and, therefore, it proceeded to prove charges before the Labour Court by examining witnesses and obviously Mr.Sathya Narayanan was the star witness. The Labour Court held on considering the oral and documentary evidence led by both the parties that the charges levelled against the employees were not proved and consequently the employer was guilty of unfair labour practices alleged. By the judgment and order dated 22/2/2006, both the complaints came to be allowed and the respondents were reinstated on their original posts with continuity of service and 50 per cent of the backwages from the date of termination till reinstatement. This order of reinstatement came to be challenged in two separate revision applications before the Industrial Court i.e. Revision Application (ULP) Nos.23 and 24 of 2006 whereas the respondent - employees also challenged the said order to the extent of denial of 50 per cent

backwages by filing Revision Application (ULP) Nos.55 and 56 of 2006. All the revision applications came to be dismissed by the learned Member of the Industrial Court at Pune by a common judgment dated 29/11/2006. The Industrial Court held that the employees could not lead any evidence pointing out that they were not gainfully employed during the intervening period and, therefore, the denial of 50 per cent backwages was just and proper. So far as the petitioner's case is concerned, the Industrial Court agreed with the Labour Court that the charge of mis-conduct as levelled vide charge-sheet dated 26/9/1999 could not be proved on the basis of the evidence of Mr. Sathya Narayanan.

4. Admittedly both the respondents were on leave from 14/9/1999 to 20/9/1999 and the leave was sanctioned in advance, entry was taken in their attendance register to that effect as has been accepted by the company's witness Shri Powergi. It is also an admitted fact that HC 500 machine was sold by the petitioner to M/s. Rane Madras, Chennai. Though it was not stated in the charge-sheet, the company contended before the Labour Court that after the said machine was sold, M/s.Rane Madras Ltd. had

invited quotations for its maintenance and the petitioner - company had submitted such a quotation but it could not get contract for maintenance and perhaps it went to M/s. M.K. Enterprises, one of the suppliers of the company. The petitioner - company, therefore, contended that the respondents - workmen accepted employment of the competitor and were seen by Mr.Sathya Narayanan on 18/9/1999 in the premises of M/s. Rane Madras Ltd. on the maintenance work of the said machine. The workmen had denied the charge, though they admitted that they were knowing Mr. Sathya Narayanan as one of the company officers and in-charge for Sales and Service Department based at Chennai. As noted earlier, the charge-sheet was based on the written report and in this report, as noted by the Court below, the names of the respondents - employees were not mentioned. This report only stated "During my visit to Rane Madras on 18/09/1999, it was noticed that MTDC Personal were attending to the machine". However, Mr.Sathya Narayanan submitted his affidavit in examination-in-chief before the Labour Court and stated that he had seen both the respondents working on the said machine on 18/9/1999 between 2 to 2.30 p.m. and he had said, "Hello" to them. In his

cross-examination before the Labour Court Mr. Sathya Narayanan admitted that the report was addressed to Shri U.D.Bagade with an intention that whenever the company personnel are deputed to other establishments where the machines are supplied. he was required to be kept informed in advance. He further admitted that he had not mentioned in the said report names of any of the respondents - employees. He also admitted that he was not examined as one of the witnesses before the Enquiry Officer and he did not have any documentary evidence to show that the respondents - employees were at Chennai factory of Rane Madras Ltd. He also admitted that he had no documentary evidence to show that he had visited the said factory on 18/9/1999 at Chennai. He further admitted that he had never stated that the respondents - employees had committed misconduct. The Labour Court, therefore, at the first instance held that there was no documentary proof that Mr. Sathya Narayanan in fact visited the factory of Rane Madras Ltd. on 18/9/1999 between 2 to 2.30 p.m. Secondly no officer from M/s. Rane Madras Ltd. was examined either before the Enquiry Officer or before the Labour Court to prove that Mr. Sathya Narayanan had visited their factory and that any of the respondents were working in the

said factory on 18/9/1999. Thirdly the Labour Court held that there was no other reliable evidence to hold that the respondents - employees were working as the representatives of M/s. M.K. Enterprises at the factory of M/s. Rane Madras Ltd. on 18/9/1999 and for the same they had earned money. There was no evidence brought on record before the Labour Court that the petitioner - company had lost the tender in competition with M/s. M.K. Enterprises. For all these reasons the Labour Court held that the charge of misconduct as levelled under Clause 24(d) of the Model Standing Orders could not be proved by the petitioner - company before it. These findings have been examined by the learned Member of the Industrial Court and he was pleased to concur with the same. In my considered opinion, there is no case made out to hold that these concurrent findings are erroneous or not supported by the evidence placed on record. Mr.Bapat, the learned counsel for the petitioner - company referred to the cross-examination of the respondents - employees before the Labour Court and pointed out that they were not certain whether they had in fact worked with M/s. M.K. Enterprises or not. However, to a specific question put in the cross-examination, both of them had stated that they

did not work as alleged, on 18/9/1999 in the factory of M/s. Rane Madras Ltd.

5. In the normal course the order of reinstatement would follow the consequences of payment of full backwages but as noted earlier, both the Courts below held that the respondents - employees could not adduce any evidence regarding their unemployment or that they failed to secure any gainful employment during the intervening period and in any case none of the respondents - employees have approached this Court raising a grievance on that score.

6. I am, therefore, satisfied that the impugned orders do not call for any interference under Article 227 of the Constitution as the concurrent view taken by both the Courts below cannot be termed as perverse or grossly erroneous. Petitions are rejected summarily.

7. The amount of backwages deposited with the Registry of this Court as per the order dated 4th July 2007 in Writ Petition No. 3807 of 2007 be transferred to the Labour Court at Pune with liberty

to the respondent workman to apply for withdrawal of the same.

(B.H.MARL